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Wednesday, May 8, 2002

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In re

DEPAK and KUSUM STOKES,  
[Debtor](#) (s).

No. 99-12603

### **Memorandum re Objection to Exemption**

The court has previously denied the debtors' [discharge](#) and disallowed claims of exemption in two pension plans because the debtors used the [plan](#) for non-retirement purposes. During the course of discovery in this litigation, [creditor](#) Northwest Farm Credit Services turned up two additional pension plans established by Kusum Stokes which were unscheduled. The debtors then amended their [schedules](#) to include these plans and claimed them exempt. Northwest and the [Chapter 7 trustee](#) object on grounds of bad faith and prejudice.


While the debtors have not fared well in litigation before this court, the credibility of debtor Kusum Stokes has never been called into question. The court accepts her testimony that she did not realize, at the time of the bankruptcy filing, that her pension plans had been funded. Their omission from the schedules does not appear to have been intentional, and accordingly the court cannot make the bad faith finding necessary to bar their exemption. The mere delay in amending the schedules is not in itself bad faith. In re Arnold, 252 B.R. 778, 786 (9th Cir. BAP 2000). Evidence of bad faith must be concrete in order to disallow a [claim](#) of exemption. Id at 781.

The court does not find any prejudice to the estate or the creditor which would bar belated

amendment. Unlike the other pension plans, it does not appear that the plans now in question were used for non-retirement purposes. Neither delay nor creditor disappointment constitutes prejudice sufficient to bar amended exemptions. Id at 787.

For the foregoing reasons, the objections to the amended claims of exemption will be overruled. Counsel for the debtors shall submit an appropriate form of order.

Dated: May 8, 2002

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Alan Jaroslovsky  
U. S. [Bankruptcy Judge](#) 

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